

Application No. 09/851,995
Amdt. Dated July 21, 2004
Reply to Office Action of March 10, 2004

Remarks/Arguments

Reconsideration is hereby requested, as is a two-month extension of time, within which to respond to the Official Action. The Small Entity extension of time fee for two months in the amount of \$210.00 is to be charged to Deposit Account No. 502557.

This is a non-final action on remand from the Board of Patent Appeals. Claims 4-5 of record have been rejected as unpatentable over 35 U.S.C. 103(a) over Hobson et al. in view of Capelli. A determination under 35 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on the underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art, (3) the differences between the claimed invention and prior art; and (4) the objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

In line with this standard, case law provides that a suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175,

Application No. 09/851,995
Amdt. Dated July 21, 2004
Reply to Office Action of March 10, 2004

F.3d 994, 1000, 50 USPQ 2d 1614, 1617. The second requirement is that the ultimate determination of obviousness must be based on a reasonable expectation of success in the intended purpose. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

Herein, Applicant urges that nothing in the art of record teaches or suggests the subject matter positively recited in amended Claims 4 and 5. Capelli simply teaches that the use of partitions in hampers is known. As set forth in Claims 4 and 5, the instant invention for an integrated hamper/laundry basket contains not only partitions to separate different laundry types but also apertures within each sidewall having areas within a range not less than one-third and no more than two-thirds of the entire area of each sidewall. The Applicant discovered that a ratio of void space of the apertures to the area of each entire surface of the side walls of a laundry hamper must be at least one-third of the area of each such surface to ensure adequate aeration of the laundry within the hamper without compromise of structural integrity. That is, for the purposes of strength and stability essential to the intended utility of the hamper, this ratio must not be less than one-third; however, should not exceed two-thirds of each sidewall for advantageous aeration of the laundry. Accordingly, as is amended in the sub-paragraph (b) of Claim 4, the Applicant's discovery is not

Application No. 09/851,995
Amdt. Dated July 21, 2004
Reply to Office Action of March 10, 2004

simply that a laundry basket may be formed having selectable partitions therein but, as well, that there exists a specific range of area of the void space of the apertures in each sidewall to the total area of each sidewall that provides an optimum balance between aeration of the laundry therein and necessary structural integrity of the sidewalls themselves.

On the contrary, in Hobson et al's hamper the ratio of void space of the apertures to the area of each surface falls below the range desired. That is, Hobson's apertures occupy over 50% of each aeration panel, but each panel is about 50% of each entire sidewall. This is apparent in the enlarged view of the upper half of Fig. 3 of Hobson attached herewith, and in Fig. 3 as shown in Des. 344,167. Thus Hobson's aperture is about 0.25, (a declaration supported thereof is also attached herewith) which falls below the desired range of not less than one-third. Furthermore, not only are the apertures on the hamper of Hobson et al located on a panel within end wall, as opposed to the wall itself as in the Applicant's invention, if the apertures were placed on an entire side wall as opposed to a panel within the sidewall, the hamper would collapse when filled with laundry. I.e., the large apertures found in Hobson et al, if placed on the entire sidewall, would create an unstable structure having too much air space. However, the Applicant maintains structural integrity by the use of a specific ratio of smaller apertures uniformly disposed within the larger surface of the entire sidewall. Claim 4 has been amended to this effect.

Also, Hobson et al. uses a thicker rigid wall as a frame having an aeration panel located within that wall. Such a rigid wall in combination with the aeration

Application No. 09/851,995
Amdt. Dated July 21, 2004
Reply to Office Action of March 10, 2004

panel leads to a more complicated molding step. This in turn makes the design more expensive to manufacture and sell to consumers. In distinction, the Applicant's invention entails a uniform thickness of all sidewalls, creating a less costly product.

Accordingly, Applicant maintains that the invention as claimed is unobvious in view of the art of record, however combined. Further, neither reference of record contains any suggestion of combinability. In fact, there is by definition, no teaching of utility in Hobson et al since one of skill in the mechanical arts would not particularly consider a design patent to solve a mechanical problem.

Claims 4 and 5, are thus unobvious in view of the prior art of record, and as such are allowable over all of record, however combined. Accordingly, Applicant urges withdrawal of the rejection of Claims 4 and 5 under 35 U.S.C. §103(a).

Respectfully submitted,
Charles P. Hall

7.23.04
Date of Signature


By: Melvin K. Silverman
Registration No. 26,234

Attachments:

1. Enlarged Fig. 3 of Hobson et al.
2. Declaration under 37 CFR 1.132